

**California Welfare and Institutions Code**

**Division 4.5. Services for the Developmentally Disabled**

**Chapter 6. Developmental and Support of Community Facilities and Programs**

**Article 4. Services and Supports for Persons Living in the Community**

4685.7. (a) Contingent upon approval of a federal waiver, the Self-Directed Services Program (SDS Program) is hereby established and shall be available in every regional center catchment area to provide participants, within an individual budget, greater control over needed services and supports. The Self-Directed Services Program shall be consistent with the requirements set forth in this section. In order to provide opportunities to participate in the program, the department shall adopt regulations, consistent with federal law, to implement the procedures set forth in this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "Financial management services" means a service or function that assists the participant to manage and direct the distribution of funds contained in the individual budget. This may include, but is not limited to, bill paying services and activities that facilitate the employment of service workers by the participant, including, but not limited to, federal, state, and local tax withholding payments, unemployment compensation fees, setting of wages and benefits, wage settlements, fiscal accounting, and expenditure reports. The department shall establish specific qualifications which shall be required of a financial management services provider.

(2) "Supports brokerage" means a service or function that assists participants in making informed decisions about the individual budget, and assists in locating, accessing and coordinating services consistent with and reflecting a participant's needs and preferences. The service is available to assist in identifying immediate and long-term needs, developing options to meet those needs, participating in the person-centered planning process and development of the individual program plan, and obtaining identified supports and services.

(3) "Supports broker" means a person, selected and directed by the participant, who fulfills the supports brokerage service or function and assists the participant in the SDS Program. Specific

qualifications shall be established by the department and required of a supports broker provider.

(4) "Waiver" means a waiver of federal law pursuant to Section 1396n of Title 42 of the United States Code.

(5) "Independence Plus Self-Directed (IPSD) Waiver Program" or "Self-Directed Waiver Program" means a federal waiver to the state's Medicaid plan to allow a person with developmental disabilities who needs or requires long-term supports and services, and when appropriate, the person's family, greater opportunity to control his or her own health and well-being by utilization of self-directed services.

(6) "Self-directed services" or "SDS" means a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant, in order to meet all or some of the objectives in his or her individual program plan. Self-directed services are designed to assist the participant to achieve personally defined outcomes in inclusive community settings. Self-directed services shall include, but are not limited to, all of the following:

(A) Home health aide services.

(B) Supported employment and prevocational services.

(C) Respite services.

(D) Supports broker functions and services.

(E) Financial management services and functions.

(F) Environmental accessibility adaptations.

(G) Skilled nursing.

(H) Transportation.

(I) Specialized medical equipment and supplies.

(J) Personal emergency response system.

(K) Integrative therapies.

(L) Vehicle adaptations.

(M) Communication support.

(N) Crises intervention.

(O) Nutritional consultation.

(P) Behavior intervention services.

(Q) Specialized therapeutic services.

(R) Family assistance and support.

(S) Housing access supports.

(T) Community living supports, including, but not limited to, socialization, personal skill development, community participation,

recreation, leisure, home and personal care.

(U) Advocacy services.

(V) Individual training and education.

(W) Participant-designated goods and services.

(X) Training and education transition services.

The department shall include all of the services and supports listed in this paragraph in the IPSD Waiver Program application.

Notwithstanding this paragraph, only services and supports included in an approved IPSD Waiver shall be funded through the SDS Program.

(7) "Advocacy services" means services and supports that facilitate the participant in exercising his or her legal, civil and service rights to gain access to generic services and benefits that the participant is entitled to receive. Advocacy services shall only be provided when other sources of similar assistance are not available to the participant, and when advocacy is directed towards obtaining generic services.

(8) "Individual budget" means the amount of funding available to the participant for the purchase of services and supports necessary to implement an individual program plan. The individual budget shall be constructed using a fair, equitable, and transparent methodology.

(9) "Risk pool" means an account that is available for use in addressing the unanticipated needs of participants in the SDS Program.

(10) "Participant" means an individual, and when appropriate, his or her parents, legal guardian or conservator, or authorized representative, who have been deemed eligible for, and have voluntarily agreed to participate in, the SDS Program.

(c) Participation in the SDS Program is fully voluntary. A participant may choose to participate in, and may choose to leave, the SDS Program at any time. A regional center may not require participation in the SDS Program as a condition of eligibility for, or the delivery of, services and supports otherwise available under this Division.

(d) The department shall develop informational materials about the SDS Program. The department shall ensure that regional centers are trained in the principles of SDS, the mechanics of the SDS Program and the rights of consumers and families as candidates for, and participants, in the SDS Program. Regional centers shall conduct local meetings or forums to provide regional center consumers and families with information about the SDS Program. All consumers and

families who express an interest in participating in the SDS program shall receive an in-depth orientation, conducted by the regional center, prior to enrollment in the program.

(e) Prior to enrollment in the SDS Program, and based on the methodologies described below, an individual, and when appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall be provided in writing two individual budget amounts. If the individual, and when appropriate his parents, legal guardian or conservator, or authorized representative, elects to become a participant in the SDS Program, he or she shall choose which of the two budget amounts provided will be used to implement their individual program plan.

(1) The methodologies and formulae for determining the two individual budget amounts shall be detailed in departmental regulations, as follows:

(A) One individual budget amount shall equal 90 percent of the annual purchase of services costs for the individual. The annual costs shall reflect the average annual costs for the previous two fiscal years for the individual.

(B) One individual budget amount shall equal 90 percent of the annual per capita purchase of service costs for the previous two fiscal years for consumers with similar characteristics, who do not receive services through the SDS Program, based on factors including, but not limited to, age, type of residence, type of disability and ability, functional skills, and whether the individual is in transition. This budget methodology shall be constructed using data available on the State Department of Developmental Services information system.

(2) Once a participant has selected an individual budget amount, that individual budget amount shall be available to the participant each year for the purchase of self-directed services until a new individual budget amount has been determined. An individual budget amount shall be calculated no more than once in a 12-month period.

(3) As determined by the participant, the individual budget shall be distributed among the following budget categories in order to implement the IPP:

(A) Community Living.

(B) Health and Clinical Services.

(C) Employment.

(D) Training and Education.

(E) Environment and Medical Supports.

(F) Transportation.

(4) Annually, participants may transfer up to 10 percent of the funds originally distributed to any budget category set forth in paragraph (3), to another budget category or categories. Transfers in excess of 10 percent of the original amount allocated to any budget category may be made upon the approval of the regional center. Regional centers may only deny a transfer if necessary to protect the health and safety of the participant.

(5) The regional center shall annually ascertain from the participant whether there are any circumstances that require a change to the annual individual budget amount. The department shall detail in regulations the process by which this annual review shall be achieved.

(6) A regional center's calculation of an individual budget amount may be appealed to the executive director of the regional center, or his or her designee, within 30 days after receipt of the budget amount. The executive director shall issue a written decision within 10 working days. The decision of the executive director may be appealed to the Director of Developmental Services, or his or her designee, within 15 days of receipt of the written decision. The decision of the department is final.

(f) The department shall establish a risk pool fund to meet the unanticipated needs of participants in the SDS Program. The fund shall be administered by the department. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated to the department, without regard to fiscal years, for the purpose of funding services and supports pursuant to this subdivision.

(1) The risk pool shall be funded at the equivalent of 5 percent of the historic annual purchase of service costs for consumers participating in the SDS Program.

(2) The risk pool shall be allocated by the department to regional centers through a process specified by the department.

(3) The risk pool may be used only in the event of substantial change in a participant's service and support needs that were not known at the time the individual budget was set, including an urgent need to relocate a residence, and catastrophic injury or illness.

(4) The risk pool may be accessed by a participant more than once in a lifetime.

(g) In the first year of the SDS Program, the department shall provide for establishment of savings to the General Fund equivalent to 5 percent of the historic annual purchase of service costs for SDS program participants. In subsequent fiscal years, the department shall annually provide for establishment of savings to the General Fund equivalent to 5 percent of the annual purchase of services costs for SDS Program participants, averaged over the prior two fiscal years.

(h) A regional center may advance funds to a financial management services entity pursuant to SDS Program regulations to facilitate development of a participant's individual budget and transition into the SDS Program.

(i) Participation in the SDS Program shall be available to any regional center consumer who meets the following eligibility requirements.

(1) The participant is three years of age or older.

(2) The participant has a developmental disability, as defined in Section 4512.

(3) The participant does not live in a licensed long-term health care facility, as defined in paragraph (44) of subdivision (a) of Section 54302 of Title 17 of the California Code of Regulations, or a residential facility, as defined in paragraph (55) of subdivision (a) of Section 54302 of Title 17 of the California Code of Regulations, or receive day program or habilitation services, as defined in paragraph (16) or (34) of subdivision (a) of Section 54302 of Title 17 of the California Code of Regulations, respectively. An individual, and when appropriate, his or her parent, legal guardian or conservator, or authorized representative, who is not eligible to participate in the SDS Program pursuant to this paragraph, may request that the regional center provide person-centered planning services in order to make arrangements for transition to the SDS Program. In that case, the regional center shall initiate person-centered planning services within 60 days of a request.

(4) The participant agrees to all of the following terms and conditions:

(A) The participant shall undergo an in-depth orientation to the SDS Program prior to enrollment.

(B) The participant shall agree to utilize the services and supports available within the SDS Program only when generic services cannot be accessed, and except for Medi-Cal state plan benefits when

applicable.

(C) The participant shall consent to use only services necessary to implement his or her individual program plan as described in the IPSD Waiver Program, and as defined in paragraph (6) of subdivision (b), as an available service in the SDS Program, and shall agree to comply with any and all other terms and conditions for participation in the SDS Program described in this section.

(D) The participant shall manage self-directed services within the individual budget amount, chosen pursuant to subdivision (e).

(E) The participant shall utilize the services of a financial management services entity of his or her own choosing. A financial management services provider may either be hired or designated by the participant. A designated financial management services provider shall perform services on a nonpaid basis. An individual or a parent of an individual in the SDS Program shall provide financial management services only as a designated provider and only if the capacity to fulfill the roles and responsibilities as described in the financial management services provider qualifications can be demonstrated to the regional center.

(F) The participant shall utilize the services of a supports broker of his or her own choosing for the purpose of providing services and functions as described in paragraphs (2) and (3) of subdivision (b). A supports broker may either be hired or designated by the participant. A designated supports broker shall perform support brokerage services on a nonpaid basis. An individual or a parent of an individual in the SDS Program shall provide supports brokerage services or his or her designated representative shall provide the services only as a designated provider and only if the capacity to fulfill the role and responsibilities as described in the supports broker provider qualifications can be demonstrated to the financial management services entity.

(j) A participant who is not Medi-Cal eligible may participate in the SDS Program without IPSD Waiver Program enrollment and receive self-directed services if all other IPSD Waiver Program eligibility requirements are met.

(k) The planning team, established pursuant to subdivision (j) of Section 4512, shall utilize the person-centered planning process to develop the Individual Program Plan (IPP) for an SDS participant. The IPP shall detail the goals and objectives of the participant that are to be met through the purchase of participant selected services

and supports.

(l) The participant shall implement his or her IPP, including choosing the services and supports allowable under this section necessary to implement the plan. A regional center may not prohibit the purchase of any service or support that is otherwise allowable under this section.

(m) An adult may designate an authorized representative to effect the implementation. The representative shall meet all of the following requirements:

(1) He or she shall demonstrate knowledge and understanding of the participant's needs and preferences.

(2) He or she shall be willing and able to comply with SDS Program requirements.

(3) He or she shall be at least 18 years of age.

(4) He or she shall be approved by the participant to act in the capacity of a representative.

(n) The participant, or his or her authorized representative and the regional center case manager shall receive a monthly budget statement that describes the amount of funds allocated by budget category, the amount spent in the previous 30-day period, and the amount of funding that remains available under the participant's individual budget.

(o) If at any time during participation in the SDS Program a regional center determines that an individual is no longer eligible to continue based on the criteria described in subdivision (i), or a participant voluntarily chooses to exit the SDS Program, the regional center shall provide for the participant's transition from the SDS Program to other services and supports. This shall include the development of a new individual program plan that reflects the services and supports necessary to meet the individual's needs. The regional center shall ensure that there is no gap in services and supports during the transition period.

(1) Upon determination of ineligibility pursuant to this subdivision, the regional center shall inform the participant in writing of his or her ineligibility, the reason for the determination of ineligibility and shall provide a written notice of the fair hearing rights, as required by Section 4701.

(2) An individual determined ineligible, or who voluntarily exits the SDS Program, shall be permitted to return to the SDS Program upon meeting all applicable eligibility criteria and after a minimum of



12 months time has elapsed.

(p) A participant in the SDS Program shall have all the rights established in Chapter 7 (commencing with Section 4700), except as provided under paragraph (6) of subdivision (e).

(q) Only a financial management services provider is required to apply for vendorization in accordance with Subchapter 2 (commencing with Section 54300) of Chapter 3 of Title 17 of the California Code of Regulations, for the SDS Program. All other service providers shall have applicable state licenses, certifications, or other state required documentation, but are exempt from the vendorization requirements set forth in Title 17 of the California Code of Regulations. The financial management services entity shall ensure and document that all service providers meet specified requirements for any service that may be delivered to the participant.

(r) A participant in the SDS Program may request, at no charge to the participant or the regional center, criminal history background checks for persons seeking employment as a service provider and providing direct care services to the participant.

(1) Criminal history records checks pursuant to this subdivision shall be performed and administered as described in subdivision (b) and subdivisions (d) to (h), inclusive, of Section 4689.2, and Sections 4689.4 to 4689.6, inclusive, and shall apply to vendorization of providers and hiring of employees to provide services for family home agencies and family homes.

(2) The department may enter into a written agreement with the Department of Justice to implement this subdivision.

(s) A participant enrolled in the SDS Program pursuant to this section and utilizing an individual budget for services and supports is exempt from Section 4783 and from the Family Cost Participation Program.

(t) Notwithstanding any provision of law, an individual receiving services and supports under the self-determination projects established pursuant to Section 4685.5 may elect to continue to receive self-determination services within his or her current scope and existing procedures and parameters. Participation in a self-determination project pursuant to Section 4685.5 may only be terminated upon a participant's voluntary election and qualification to receive services under another delivery system.

(u) Each regional center shall be responsible for implementing an SDS Program as a term of its contract under Section 4629.

(v) Commencing January 10, 2008, the department shall annually provide the following information to the policy and fiscal committees of the Legislature:

- (1) Number and characteristics of participants, by regional center.
- (2) Types and ranking of services and supports purchased under the SDS Program, by regional center.
- (3) Range and average of individual budgets, by regional center.
- (4) Utilization of the risk pool, including range and average individual budget augmentations and type of service, by regional centers.
- (5) Information regarding consumer satisfaction under the SDS Program and, when data is available, the traditional service delivery system, by regional center.
- (6) The proportion of participants who report that their choices and decisions are respected and supported.
- (7) The proportion of participants who report they are able to recruit and hire qualified service providers.
- (8) The number and outcome of individual budget appeals, by regional center.
- (9) The number and outcome of fair hearing appeals, by regional center.
- (10) The number of participants who voluntarily withdraw from participation in the SDS Program and a summary of the reasons why, by regional center.
- (11) The number of participants who are subsequently determined to no longer be eligible for the SDS Program and a summary of the reasons why, by regional center.
- (12) Identification of barriers to participation and recommendations for program improvements.
- (13) A comparison of average annual expenditures for individuals with similar characteristics not participating in the SDS Program.